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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Federal-State Joint Board )  
on Universal Service )

CC Docket No. 96-45

To: The Commission

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COMMENTS OF PUERTO RICO TELEPHONE COMPANY

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## SUMMARY

PRTC proposes two important changes to the Joint Board's Recommended Decision. First, the statutory mandate for affordable rates must be incorporated into the Recommended Decision. To apply affordability to the universal service mechanism, the Commission should use subscribership levels in a carrier's service area to determine whether the rates are presumptively affordable. If the subscribership level for a particular area is more than five percentage points below the national average, then the national benchmark, set by average revenues-per-line, should be adjusted to reflect the need for additional support to reduce prices in the area and encourage subscribers to obtain service.

The telephone subscribership rate in Puerto Rico is far below the national average. With an average subscribership rate of 74 percent, the goal of universal service remains out of reach for the citizens of Puerto Rico. Based upon a comparison with the national subscribership level, Puerto Rico stands out as an area that should be specifically and expressly targeted for universal service support.

Second, local exchange carriers in insular areas are likely to experience cost factors that are difficult to incorporate in a proxy cost model regardless of whether they are considered rural carriers under the 1996 Act. Congress correspondingly recognized that consumers in rural, insular, and high cost areas may face prices for local exchange service that exceed those paid by

consumers in urban areas, requiring that these areas should receive universal service support to adjust rates to a level that is affordable and comparable to those in urban areas. Given that the Joint Board has determined that it will be difficult to assess the costs of serving insular areas, support for eligible carriers in insular areas should be based on the incumbent local exchange carrier's embedded costs. Alternatively, any model employed to estimate insular area local exchange carrier costs must be modified to predict accurately the costs faced in providing service in such an area.

The adoption of both proposals is necessary to address chronically low subscribership rates, particularly in insular areas. Until these problems are addressed, the Commission will not meet its universal service mandate under Sections 1 and 254 of the Communication Act.

Finally, the Commission should reject the Joint Board's proposal to collect contributions for the schools and libraries fund based on interstate and intrastate revenues, because it does not have jurisdiction under the Communications Act to assess intrastate revenues.

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Puerto Rico Telephone Company ("PRTC") hereby submits its Comments regarding the Federal-State Joint Board's Recommended Decision in the above-referenced proceeding.<sup>1</sup> The Joint Board's Recommended Decision currently does not meet the universal service mandate for insular areas under the Telecommunications Act of 1996. The Commission should consider implementing changes to amend the recommendation to incorporate affordability of basic telephone service into the support calculation mechanism. The Commission also should clarify that support for insular areas should be distributed to all carriers serving these areas according to the same mechanism regardless of whether they are considered rural carriers.

Congress instructed the Commission to implement universal service support so that consumers may obtain basic telephone service at rates that are just, reasonable, and affordable. At

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the same time, Congress recognized that consumers in rural, insular, and high cost areas may face prices for local exchange service that exceed those paid by consumers in urban areas. Congress directed the Commission to ensure that consumers in these distinct areas receive services at rates comparable to those available in urban areas. Although the Joint Board acknowledged these requirements — that the universal service mandate can only be met through affordable rates, and that affordable rates must be available in rural, insular, and high cost areas — it has not adequately incorporated these concepts into its Recommended Decision.

In these Comments, PRTC proposes a two-prong solution for addressing these shortcomings in the Joint Board's proposal:

- Where subscribership is more than five percentage points below the national average, the benchmark revenues per line should be adjusted to account for any income differential in the service area.
- All carriers in insular areas — not just rural carriers — should use embedded costs to calculate the level of necessary USF support.

The Commission should use subscribership levels in a carrier's service area to determine whether the rates are presumptively affordable. If the subscribership level for a particular area is more than five percentage points below the national average, then the national benchmark, set by average revenues-per-line, should be adjusted downward (in proportion to

the difference between the service area per capita income and the national average income level) to reflect the need for additional support to reduce prices in the area and encourage subscribers to obtain service.

In addition, consistent with the fact that Congress has found that consumers in insular areas may face increased costs due to unique factors in providing service to the area, the Commission must ensure that universal support is available for carriers serving these areas. Local exchange carriers in insular areas are likely to experience cost factors that are difficult to incorporate in a proxy cost model regardless of whether or not they are considered rural carriers under the 1996 Act. Congress determined that insular areas, rural areas, and high cost areas should receive universal service support to adjust rates to a level that is affordable and comparable to those in urban areas. There is no indication that Congress intended that carriers in insular areas should be treated differently depending upon their status as a rural or non-rural carrier under the Act. Therefore, support for insular areas should be available to eligible carriers based on the incumbent local exchange carrier's embedded costs. Alternatively, any model employed to estimate insular area LEC costs must be modified to predict accurately the costs faced in providing service in such an area. No such model has been developed to date.

The adoption of these proposals is necessary to address chronically low subscribership rates, particularly in insular



areas. Until these problems are addressed, the Commission will not comply with its universal service mandate under Sections 1 and 254 of the Communication Act.

## **II. THE RECOMMENDED DECISION VIOLATES UNIVERSAL SERVICE PRINCIPLES UNDER THE TELECOMMUNICATIONS ACT OF 1996**

The 1996 Act codified for the first time the Commission's mandate to implement regulations to ensure that basic telephone service is available throughout the nation at just, reasonable, and affordable rates.<sup>2</sup> "Ensure" means "to make (one) sure (as by pledging, guaranteeing, convincing, or declaring)."<sup>3</sup> Congress instructed the Joint Board to "recommend changes to any of [the Commission's] regulations" to implement the provisions of Sections 254 and 214(e) of the Communications Act. Congress provided clear principles in the 1996 Act for the Joint Board and the Commission to follow to ensure that basic telephone service would be universally available to all United States consumers at just reasonable, and affordable rates. The Joint Board has not fully followed these clearly stated principles by providing effective support to an area in the United States such as Puerto Rico that affirmatively lacks basic universal service.

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<sup>2/</sup> 47 U.S.C. §§ 254(a) and (i); see also 47 U.S.C. § 151.

<sup>3/</sup> Webster's Third New International Dictionary at 756 (1986).

A. Puerto Rico's Subscribership Level Is Well Below the National Average

PRTC has previously demonstrated that the telephone subscribership rate in Puerto Rico is far below the national average. With an average subscribership rate of 74 percent, the goal of universal service remains out of reach for the citizens of Puerto Rico. Indeed, based upon a comparison with the national subscribership level, Puerto Rico — with a Commonwealth-wide subscribership level more than twenty points below the national average — stands out as an area that should be specifically and expressly targeted for universal service support.

PRTC has presented to the Commission and Joint Board evidence of Puerto Rico's low subscribership levels. In its initial comments in this proceeding, PRTC stated that

U.S. telephone penetration is now 94% . . . , while overall penetration in Puerto Rico is 72% and remains below 50% in some areas. By contrast, U.S. telephone penetration was more than 71.5% 40 years ago in 1955.<sup>4</sup>

In its Reply Comments, PRTC reported that

Although PRTC has almost tripled telephone service penetration since 1974, telephone penetration of 72% in Puerto Rico remains extremely low relative to the U.S. average of 94%.<sup>5</sup>

Similarly, in its Further Comments, PRTC reiterated that

In most areas of the United States, where service penetration is nearing ninety-five percent, rates for

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<sup>4/</sup> PRTC Comments (filed April 12, 1996) at 3 (footnotes omitted).

<sup>5/</sup> PRTC Reply Comments (filed May 7, 1996) at 2-3 (footnote omitted).

services appear to be largely affordable . . . . In stark contrast, however, the service penetration rate in Puerto Rico is near seventy-two percent.<sup>6</sup>

Finally, in its statement to the Joint Board as a participant on the panel to discuss issues significant to insular areas, PRTC repeated that

[a]lthough major strides have been made and modern facilities are now widely available in Puerto Rico, telephone service penetration is low by U.S. standards. Telephone service penetration in Puerto Rico recently reached 74%, but remains as low as 48% in some areas.<sup>7</sup>

Clearly, continued universal service assistance is necessary to provide local exchange service at affordable rates in Puerto Rico.

Comments from some parties indicate that subscribership levels that depart from national or state averages easily may be overlooked. In the Recommended Decision, the Joint Board reports that "many parties contend that the present subscribership level indicates that current rates are affordable."<sup>8</sup> For example, one party urged the Commission to take official notice of the national subscribership level as an indicator of the affordability of local exchange service.<sup>9</sup> Ameritech similarly

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<sup>6/</sup> PRTC's Response to Questions in Universal Service Proceeding (filed August 2, 1996) at 1-2.

<sup>7/</sup> Ex Parte Statement of PRTC, Panel on Insular Areas and Alaska (filed September 13, 1996) at 1.

<sup>8/</sup> Recommended Decision at ¶ 119. But see id. at ¶ 120 (citing the New Mexico Attorney General's Comments at 2 (reporting a link between income level and subscribership levels)).

<sup>9/</sup> Id. (citing Vanguard Further Comments at 2).

asserted that "it is not unreasonable to conclude that 'core' telephone services are generally affordable when at least 85% of the households subscribe to those services."<sup>10</sup> Neither of these parties acknowledges that the subscribership level in Puerto Rico (now approximately 74 percent) is 20 percent below the national average and at least 10 percent below the lowest state average of 85 percent (New Mexico).

The Commission's Notice of Proposed Rulemaking in this proceeding specifically sought comments to help assess "whether 'affordable' service is being provided to all Americans."<sup>11</sup> Although the Joint Board acknowledges that there is a "general correlation" between subscribership levels and affordability, the Recommended Decision does not propose a mechanism to increase the subscribership level in Puerto Rico, or elsewhere, by tying an assessment of affordability to the level of USF support that an eligible carrier may receive.

PRTC's efforts to provide universal service continue. In meeting its universal service mandate, however, the Commission must address the fact that the situation in Puerto Rico shows that affordable service is not available to all Americans. For the Commission to meet its universal service statutory mandate, the universal service support mechanism must specifically account for these limited areas of low subscribership by incorporating a mechanism that will improve affordability of rates.

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<sup>10/</sup> Ameritech Further Comments at 4.

<sup>11/</sup> NPRM at ¶ 4 (emphasis added).

B. The Proposed USF Regime Will Likely Cause Significant Declines in Puerto Rico Subscribership

As PRTC has shown, the subscribership level in Puerto Rico is dramatically below the national average and far lower than every state average. While departing from the current method for administering USF support may not result in noticeable, corresponding fluctuations in overall national subscribership averages, inadequate USF support could force PRTC to suffer significant losses or cause upward rate pressure that would result in a meaningful loss of subscribership, contrary to the goals of universal service and the express mandate of the new Act. The combined effect of new regulations in the areas of universal service, interconnection pricing, and access charge reform is likely to place unavoidable upward pressure on consumer rates as a direct consequence of these regulatory changes.<sup>12</sup> Congress recognized this potential, and that is why it gave specific directions to the Joint Board and Commission to ensure that universal service is achieved.

1. Subscribership in Puerto Rico Can Be Increased Only By Maintaining Affordable Rates

Given the low subscribership rates in Puerto Rico, PRTC must avoid upward rate pressure that would drive customers off the network. Puerto Rico subscribership has been increased by over 50 percent since 1984 without corresponding increases in local

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<sup>12/</sup> These effects will occur solely as a result of regulatory changes and are in addition to any effects which will flow from the diversion of revenue resulting from normal competitive entry.

rates.<sup>13</sup> Universal service support through existing support mechanisms has contributed to PRTC's ability to provide service to additional consumers without increasing rates. Loss of this support resulting from the application of hypothetical models which incorporate assumptions that do not reflect local conditions, in conjunction with regulatory changes which threaten the existing means of loop cost recovery, will have the undeniable yet regrettable result of shifting costs to the residential customer, many of whom find service unaffordable at existing rates.

Given Puerto Rico's history of low subscribership, PRTC has had to hold constant the prices of local service in recognition of the low average income in Puerto Rico and the high cost of living. As PRTC has reported in previous pleadings, 55.3 percent of the families in Puerto Rico have incomes that place them below the poverty level.<sup>14</sup> This is five and one-half times the national average.<sup>15</sup> At the same time, the cost of living index is higher than the national average. In 1995, the cost of living index for Puerto Rico was 137 as compared to the national average which is set at 100.<sup>16</sup> An increase in rates for these consumers, or for those who exceed the poverty line but are nonetheless

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<sup>13/</sup> See PRTC Comments at 3.

<sup>14/</sup> 1990 Census of Population and Housing, Summary Social, Economic, and Housing Characteristics, UNITED STATES, 1990 CPH-5-53 (1993) at 191 (reporting 1989 statistics).

<sup>15/</sup> See id. at 228.

<sup>16/</sup> Data provided by the Bureau of Labor Statistics.

quite poor, could make the difference between a choice to subscribe to telephone service or to go without. And the lack of a telephone could in turn play a role in keeping that potential subscriber poor. Therefore, PRTC faces a triple challenge in meeting its universal service objective of providing service in an insular area, with high costs, to a plurality of low-income consumers.

2. Changes in the Federal Regulatory Regime Could Result in the Transfer of Loop Cost Recovery to Residential Local Rates

Significant shifts in federal regulatory policy involving universal service, local interconnection, and potentially, access reform will likely have the combined effect of increasing local rates for residential subscribers. The Recommended Decision does not address how universal service support will replace the revenues needed to avoid upward rate pressure as a result of changes flowing from this "triad" of regulatory proceedings. While these changes may not have significant effects upon the largest mainland LEC's, they could have an extreme impact upon PRTC and its customers. As local exchange carriers like PRTC are restricted from seeking revenue recovery from local and long distance interconnectors, they may ultimately have to suffer losses or seek local rate increases to recover the costs actually incurred in providing their services. If the universal service support mechanism does not sufficiently mitigate the effect of rate increases on affordability of service, resulting in the loss of subscribers, then the Congressional mandate for just,

reasonable, and affordable local rates will have been directly violated.

Two aspects of the Recommended Decision will significantly impact the level of USF support that will be available to PRTC. First, because the 1996 Act requires that "[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service,"<sup>17</sup> no carrier will receive a USF distribution without making an offsetting contribution (unless the carrier's contribution would be de minimis). This means that even if the level of USF support is held constant, the net support will actually decrease when the contribution is taken into account. Clearly, this is a result of the provisions of the new statute, but it must be considered in order to assess accurately the effect of the proposed mechanism.

In addition, the Joint Board proposes to remove Long Term Support ("LTS") from the carrier common line charge ("CCL") and assign it to the universal service fund.<sup>18</sup> PRTC, a recipient of LTS, now will contribute to its support. In addition, PRTC may no longer receive the support now provided by LTS if the new mechanism is not tailored adequately for local conditions.<sup>19</sup> For PRTC, this is an annual loss of more than \$59 million in

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<sup>17/</sup> 47 U.S.C. § 254(b)(4).

<sup>18/</sup> Recommended Decision at ¶ 294.

<sup>19/</sup> See discussion, infra at Part IV (explaining that any carrier serving an insular area may be eligible to receive USF support based on embedded costs).



support. These changes will result in significant declines in PRTC's net revenues and consequent monetary losses and upward pressure on local rates.

PRTC will lose cost recovery options as a result of the local interconnection proceeding, as well. An incumbent local exchange carrier's ("ILEC's") obligation to offer interconnection, unbundled network elements, and resale will provide opportunities for competitors to offer service and necessarily compete for the incumbent's customers. The loss of customers, and associated revenues, to competition is a consequence of the 1996 Act itself.

However, the Commission's Local Competition Order has imposed additional penalties on ILECs by prohibiting them from recovering their actual costs and instead limiting them to recovery of incremental costs, as measured by the TELRIC pricing methodology. If this pricing regime withstands judicial scrutiny, ILECs will be required to recover any remaining actual costs elsewhere. This is not a result of competitive entry or marketplace forces at work, but instead is a result of regulatory decisions not mandated by the Act. For PRTC, the result will be a loss of interconnection revenue in addition to any loss in universal service support.

The final leg in the regulatory triad that will likely place cost pressure on local exchange consumers is access charge reform. The Commission apparently intends to change the current access charge regime, starting first with the reduction or

phasing out of CCL charges that are now paid by IXCs and carriers that purchase unbundled network elements from ILECs.<sup>20</sup> Based upon the surmise that "some portion of the CCL charges represents universal service support," the phase-out plan supposedly would cover the time period in which new USF support mechanisms were in place.<sup>21</sup> However, the Joint Board has made no attempt to explain why recovery of these costs through a CCL charge appears now to be impermissible.<sup>22</sup> Finally, the Joint Board has recommended that "the current CCL rate structure is economically insufficient and urge[s] the Commission to change the current CCL rate structure so that LECs are no longer required to recover the NTS cost of the loop from IXCs on a traffic sensitive basis."<sup>23</sup> These changes will likely occur, however, after the implementation of USF reform has begun, such that the impact on

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<sup>20/</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order at ¶ 720 (rel. August 8, 1996) ("Local Competition Order").

<sup>21/</sup> Recommended Decision at ¶ 759 (citing Local Competition Order at ¶ 719).

<sup>22/</sup> Lacking from this analysis is a recognition that IXCs and others actually benefit from the use of the local loop in delivering their services. This benefit bears a direct relationship to the volume of usage (because IXCs bill customers on a volume-sensitive basis) and compensation for this use is wholly appropriate. See Lindheimer v. Illinois Bell Tel. Co., 292 U.S. 151 (1934); Smith v. Illinois Bell Tel. Co., 282 U.S. 133 (1930). Indeed, if the IXC built its own network to the end user or employed the facilities of an alternative network (e.g., CATV) it would have to pay for them.

<sup>23/</sup> Recommended Decision at ¶ 754.

rates and universal service — although potentially severe — cannot be quantified in advance.

The combined effect of these regulatory changes would be to eliminate existing sources of local loop cost recovery (see Exhibit A). The unfortunate result ultimately will be substantial losses or higher rates for the consumers, either through an increase in the subscriber line charge or local rates themselves.<sup>24</sup> Higher local rates undoubtedly will result in a decrease in subscribership in Puerto Rico, where approximately one-third of the household incomes of the current subscribers are below the poverty level.<sup>25</sup> This result is in direct contravention of the Commission's universal service mandate which requires that the Commission ensure that service be made available to consumers at affordable rates.

3. Adjustments to the Lifeline Support System for Low Income Consumers Do Not Offset Sufficiently Increases Due to Regulatory Changes

The Recommended Decision proposes favorable changes to the Lifeline program by eliminating the state matching requirement

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<sup>24/</sup> The difference in these two changes is not meaningful for consumers because the amount of the total flat-rate bill determines whether service is affordable.

<sup>25/</sup> This figure is estimated based on the poverty level and subscribership rate. Over 50 percent of the population has an income below the poverty level. Presumably, all, or almost all, households that do not take telephone service (approximately 25 percent) are below the poverty level. The remaining 25 percent of subscribers below the poverty level account for one-third of the approximately 75 percent of the households in Puerto Rico that subscribe.

for federal support to low income subscribers.<sup>26</sup> However, the \$5.25 (or \$7.00) in federal support is not sufficient to overcome the upward rate pressure caused by regulatory changes in universal service, local interconnection, and potentially, access charge reform.

The average local loop cost in Puerto Rico is \$356.78.<sup>27</sup> If all loop cost recovery is obtained from the end user, this would require \$30 in monthly revenue in addition to the recovery of switching costs. The current average monthly rate in Puerto Rico is \$15.97.<sup>28</sup> A \$5.25 or \$7.00 reduction applied against a rate of \$15.97 a month is meaningful. However, the same reduction applied against a monthly rate in excess of \$30 would not stimulate new subscribership and would not stem the loss of existing subscribers for whom the \$15.97 rate is barely affordable.

There is an additional factor to consider with regard to Puerto Rico's basic service subscribers. Because the national median income is 3.54 times higher than the Puerto Rico median income,<sup>29</sup> to assess the real impact on an average Puerto Rico

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<sup>26/</sup> See Recommended Decision at ¶¶ 418-19.

<sup>27/</sup> See 1996 Monitoring Report, CC Docket No. 80-286, Table 3.7 at 86.

<sup>28/</sup> See PRTC Reply Comments at 9.

<sup>29/</sup> This estimate is supported by 1990 census data that reports the average per capita income in the United States is \$14,420, whereas the average per capita income in Puerto Rico is \$4,177.

citizen, figures must be adjusted for this income level.<sup>30</sup> In this context, applying a \$5 or \$7 reduction will not make the rate affordable for a citizen with an income near or below the poverty level. If the effect of proposed regulatory changes is reflected in rate increases, the Lifeline subsidy will not return the rate to its current level — a level which is already unaffordable for approximately 26 percent of the population. Indeed service penetration would severely decline — directly contrary to the intent of Congress expressed in the '96 Act.

### **III. "AFFORDABILITY" MUST BE INCORPORATED INTO THE USF SUPPORT CALCULATION**

Congress incorporated the concept of affordability in two distinct universal service statutory provisions. First, Section 254(b)(1) states that "[q]uality service should be available at just, reasonable and affordable rates."<sup>31</sup> Second, Section 254(i) provides that "[t]he Commission and the states should ensure that universal service is available at rates that are just, reasonable and affordable."<sup>32</sup> Contrary to this clear Congressional mandate, the Joint Board's proposal fails to account for affordability in its mechanism for determining universal service support for carriers.

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<sup>30/</sup> The cost of living in Puerto Rico is 137% of the national average, placing the island's residents at a particular disadvantage.

<sup>31/</sup> 47 U.S.C. § 254(b)(1).

<sup>32/</sup> 47 U.S.C. § 254(i).

The Joint Board has determined that states should exercise the "primary responsibility" for determining whether rates are affordable based upon a list of suggested factors.<sup>33</sup> However, the Joint Board has neglected to propose how such a determination will be addressed by the federal universal service system by way of support. Merely "identifying" whether rates are affordable does nothing to ensure that the rates then will be changed so as to become affordable. As written, a state's determination of affordability appears to have no impact upon the method by which universal support will be awarded. Instead, the Joint Board recommends that the Commission and a state "work together informally" when the subscribership level is found to have fallen on a statewide basis.<sup>34</sup>

This proposal falls short of ensuring that "universal service is available at rates that are just, reasonable and affordable." PRTC agrees that subscribership levels are "an objective criterion" to assess whether the universal service regime is ensuring affordable rates.<sup>35</sup> However, because the Puerto Rico subscribership level has yet to reach an acceptable point, the state commission will not have the luxury of waiting until the subscribership level falls from its current level to

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<sup>33/</sup> Recommended Decision at ¶ 131. The Joint Board has found that a number of factors affect affordability, including local calling area size, income levels, cost of living, and population density in addition to rates. Id. at ¶¶ 125-26.

<sup>34/</sup> Id. at ¶ 132.

<sup>35/</sup> See id. at ¶ 132.

work "informally" with the FCC to address this problem. A determination that the rate is not affordable now must invoke an existing mechanism to ensure the availability of universal service.

The 1996 Act specifically establishes "affordability" as a guiding principle of the universal support mechanism. This element should be more than a touchstone for future assessments by a commission, whether state or federal. Instead, affordability should be an integral factor in determining the actual level of support that must be distributed to an area from the fund. Despite recognizing that Congress "gave the Commission a role in ensuring universal service affordability,"<sup>36</sup> the Joint Board has not proposed a mechanism to carry out such a role in a meaningful way. Therefore, the Commission must adopt a measure that will use affordability as a factor to determine the level of support payments available to carriers serving areas where rates are not now affordable. This determination can be best made according to subscribership levels, which "provide an objective criterion to assess the overall success of state and federal universal service policies in maintaining affordable rates."<sup>37</sup>

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<sup>36/</sup> Recommended Decision at ¶ 132.

<sup>37/</sup> See id.

**IV. THE STATUTE REQUIRES THAT SERVICES BE AVAILABLE IN INSULAR AREAS AT COSTS REASONABLY COMPARABLE TO RATES IN URBAN AREAS WITHOUT QUALIFICATION**

The third of the six universal service principles established by Congress in the 1996 Act requires that consumers in rural, insular, and high cost areas have access to similar services at comparable rates to those available in urban areas.<sup>38</sup> In implementing this provision, Congress recognized that insular areas face costs and universal service concerns that are distinct from urban areas, and from rural and other high cost areas as well. Yet, the Joint Board appears to have structured its proposal for insular areas to include only those insular areas that are served by carriers meeting the definition of a rural telephone company. This outcome is contrary to the plain language of the statute which does not condition support for insular areas upon rural company status and will have the practical effect of denying for all of Puerto Rico support based on its status as an insular area. Therefore, the proposal for insular areas must be clarified such that it applies to any carrier providing service in an insular area.

**A. Support Targeted for Insular Areas Should Not be Limited to Rural Carriers**

Congress unmistakably determined that insular areas, in addition to rural and high cost areas, must be targeted for universal service support. "Insular" was specifically added to the list of consumers for whom universal service support should

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<sup>38/</sup> 47 U.S.C. § 254(b)(3).



be available.<sup>39</sup> The Commission, the Common Carrier Bureau, and the Joint Board each demonstrated that it was well aware of the requirement under the 1996 Act to reform universal service such that consumers in insular areas would have access to a variety of telecommunications services "(1) that are reasonably comparable to those services provided in urban areas and (2) that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."<sup>40</sup> However, in providing for service to insular areas, nowhere did Congress indicate that carriers serving these areas should be treated differently. This disparate treatment was not proposed in the NPRM or the additional questions posed by the Common Carrier Bureau, nor has it been justified in the Recommended Decision itself.

Yet, the Joint Board has advanced a proposal such that universal service support for rural carriers serving insular areas will be determined based on frozen 1995 embedded loop costs until further review, whereas any other carrier in the area will be required to use the yet to be identified proxy cost model. It appears, however, that the proposal can be easily clarified to remedy this inconsistency such that assistance available to support universal service in insular areas will be extended to any eligible carrier providing service in Puerto Rico.

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<sup>39/</sup> H. Conf. Rep. No. 458, 104th Cong., 2d Sess. 131 (1996).

<sup>40/</sup> See Recommended Decision at ¶ 430.